IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 1354 OF 2006

Naresh Govind Vaze .. Petitioner

versus

The Government of Maharashtra & ors..Respondents

Petitioner-in-person

Mr.P.M.Patil, A.G.P for Respondent nos. 1,2 & 4.

CORAM : J.N.PATEL AND

SMT ROSHAN DALVI, JJ

DATED : 11th July, 2006

P.C.

1. Heard petitioner in person. Mr.P.M.Patil, A.G.P. for the respondents.

2. The petitioner has challenged the order dated 14th December, 2005 by which the petitioner's services came to be determined after conducting a

departmental inquiry against him as prescribed under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It was decided that the petitioner should be compulsorily retired from service as prescribed under Rule 5 (i) (vii) of the said Rules. The petitioner was given the benefit of 2/3rd compulsory retirement pension as contemplated under Rule 100 of the Maharashtra Civil Services (Pension) Rules, 1982 in consideration of the fact that he has completed 10 years of service.

3. The petitioner while he was working as C.J.J.D. and J.M.F.C. at Patan, District Satara was found conducting himself unlike a Judicial Officer and therefore after a preliminary inquiry was made it was decided to initiate a departmental inquiry against the petitioner in which the petitioner was charged that during his tenure at Patan he was not interested in discharging his duties and made six representations for transfer all of which were rejected, he was used intemperate language while communicating with the High Court under his representation dated 2nd May, 2000 and that he was in the habit of frequently leaving the headquarters thereby causing inconvenience to the advocates and

litigants and he used to behave whimsically with advocates and was harassing the advocates,litigants and employees with an intention to get transfer at convenient place and therefore had failed to maintain integrity and devotion to duty in order to achieve his object of getting himself transferred which amounts to misconduct and misbehaviour and unbecoming of a judicial officer. After the charge sheet was submitted to the petitioner, an enquiry came to be conducted and the Enquiry officer in his report found that except for the charge of being in the habit of leaving headquarters frequently and thereby causing inconvenience to the advocates and the litigants is concerned, all other charges stand established. In so far as leaving the headquarters was concerned, the Inquiry Officer came to the conclusion that he was in the habit of leaving the headquarters frequently which did cause inconvenience to the advocates and litigants but it was with permission.

4. The inquiry report was placed before the disciplinary committee of the High Court. As per the decision dated 16th August 2004 it was decided to issue notice to the petitioner to show cause as to why the findings and reasons recorded by the

Enquiry Officer should not be accepted and after considering the representation if any, if findings and reasons recorded by the Enquiry Officer were accepted, why one of the major penalties including penalty of dismissal from service as prescribed by Rule 5 (1) (vii) to (ix) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 may not be imposed upon him. In reply to the show cause notice, the petitioner took the stand that he had no fear in his mind of the said notice. He further stated that if the High Court wanted to dismiss him, petitioner had nothing to say because petitioner was part of judiciary and was knowing that the disciplinary authority would take action against petitioner. The petitioner also made allegations against High Court that it was the HIgh Court who had persistently put him in difficulty by transferring frequently and he would not bother about any orders passed by the High Court and denied all the allegations against him. The petitioner did not stop at this but, also went to the extent of threatening to initiate action against High Court and therefore in its meeting dated 22nd November, 2005 the representation came to be rejected and the findings recorded by the Enquiry Officer were accepted as the same were

well- founded. Considering the nature of the charges it was decided to impose upon the petitioner the major penalty of compulsory retirement from service as per rules. It was further decided to recommend 2/3rd compulsory retirement pension as admissible under Rule 100 of the Maharashtra Civil Services (Pension) Rules, 1982 since the petitioner had completed 10 years of service. The matter was recommended to the government to issue necessary orders and this is how the respondent-State issued the order dated 14th August, 2005 which was served upon the petitioner on 16th December, 2005.

5. The petitioner has assailed the order on several grounds. But, his main contention relates to the authority of the Chief Justice to take a decision in the matter for dispensing with his service on the premise that at the relevant time when this decision was taken, this High Court was without Chief Justice and the decision has been taken by the Acting Chief Justice who had no such authority under the Constitution.

6. The petitioner further contended that the charges against him are of such a nature that it

does not call for any major penalty and on the other hand, these charges are not established for reason that the petitioner's stand taken in the enquiry by filing an affidavit remains uncontroverted and the findings of the Enquiry Officer is mainly based on the evidence of the witnesses examined against him. Another contention of the petitioner is that the petitioner was put to unnecessary harassment and inconvenience for repeatedly transferring him and in so far as the grievances of lawyers, litigants and staff is concerned, they are unfounded because the petitioner used to discharge his duties strictly in accordance with law by observing discipline expected of a judicial officer.

7. The petitioner who appears in person impressed upon this Court by stating that he has been brought up in a manner that he cannot tolerate indiscipline and therefore when he tried to bring discipline in his Court by insisting upon the lawyers, litigants and the staff to discharge duties towards the court in a particular manner which according to him was proper, this probably must have offended them and they have made wild allegations against him without any justification.

8. We have repeatedly asked the petitioner to make his submission on the merits of the matter but, he submitted that the charges itself were false and frivolous. The impugned order cannot be sustained on the basis of such a charge and according to him, the whole system was working against his interest because, he was honestly discharging his duties as a Judicial officer.

9. The learned counsel appearing for the respondents submitted that the decision to compulsorily retire the petitioner was taken after holding a departmental inquiry against him in which he was given a fair opportunity and therefore considering the nature of the charges, the punishment imposed is just and proper and the decision does not call for any interference.

10. We have not only a given patient hearing to the petitioner as he is appearing in person but, also examined the records and proceedings and we do not find that the decision making process suffers from any error or illegality. As rightly submitted by the learned counsel appearing for the respondents, the charges against the petitioner

which have been established in the enquiry is borne out from the evidence on record and attracts major punishment and rather in our opinion, the High Court was sympathetic towards the petitioner in not imposing maximum penalty of dismissal probably taking into consideration that he has put in 10 years of service.

11. Therefore, we not find any merit in the petition. The petition is dismissed in limine.

12. The petitioner submits that he may be granted leave to approach the Supreme Court in the matter as substantial questions of law arises in this case. In our opinion, no such leave is required in the matter. The petitioner can very well challenge the order passed by this Court by approaching the Supreme Court for which there is no legal impediment.

(J.N.Patel, J)

(Smt Roshan Dalvi, J)